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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,276	12/03/2001	Claude Bergerioux	MAD-C119	7102
7590	11/10/2003		EXAMINER	
Lorusso & Loud 3137 Mount Vernon Avenue Alexandria, VA 22305			TRAN, LOUIS B	
			ART UNIT	PAPER NUMBER
			3721	
DATE MAILED: 11/10/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/913,276

Applicant(s)

BERGERIOUX ET AL.

Examiner

Louis B Tran

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/12/03
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10, 11, 13 and 15-18 is/are rejected.
- 7) ☒ Claim(s) 12 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 12 August 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of the invention of Group II (claims 10-18) is acknowledged. The portion of the restriction between the two groups of invention is acknowledged to be moot in view of the cancellation of claims 1-9.

2. Applicant's election with traverse of species b (claims 10-15) in Paper No. 9 is acknowledged. The traversal is on the ground(s) that the groups/species a and b are actually the same method step. This is found persuasive and the species requirement stands withdrawn. Therefore, claims 10-18 are examined.

Claim Rejections - 35 USC § 112

3. Claims 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 recites the limitation "step (a)" in lines 3 and 4 of the claim. There is insufficient antecedent basis for this limitation in the claim. As claimed, there are two step (a) limitations. Step (a) is defined in claim 10 and also in claim 13. Correction required.

Claim 14, line 12, there is no proper antecedent basis for "the collar portion"; perhaps such should be changed to --the collar--.

Claim Objections

4. Claim 17 is objected to because in line 2, the recitation "step a includes" should read --step (a) includes--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Hitoshi et al. (Japanese Utility Application 146545/1989).

Hitoshi et al. teaches a method of manufacturing a packaging container from a packaging material comprising attaching a cap 5 onto a cap attachment portion 6 of the packaging material, then forming the packaging material on which the cap has been attached into a predetermined shape and

charging a liquid food into the formed packaging material as seen in Figures 2 and 3 (as in claim 10).

Hitoshi et al. teaches a method of manufacturing wherein the packaging material is in sheet form before forming and the packaging material on which the cap has been attached is formed into a tubular shape seen in Figures 5 (as in claim 11).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 13 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hitoshi et al. (Japanese Utility Application 146545/1989) in view of Kuzuki et al. (Japanese Utility Application 125605/1988).

Hitoshi et al. discloses the invention substantially as claimed including wherein the cap includes a collar wherein a thin walled portion is preformed in the packaging material before the packaging material is subjected to forming but does not show step (a) includes punching a hole in an area of the

packaging material surrounded by the collar, welding an inner tape onto a reverse surface of an area of the packaging material around the hole in order to cover the hole and welding together the inner tape and the pull tab through the hole to thereby form a rupture portion (as in claim 13).

However, Kuzuki et al. teaches step (a) includes punching a hole in an area of the packaging material surrounded by the collar, welding an inner tape 15 onto a reverse surface of an area of the packaging material around the hole in order to cover the hole and welding together the inner tape and the pull tab 9 through the hole to thereby form a rupture portion as in Fig. 1-4 (as in claim 13), wherein the cap includes a lip and wherein step (a) includes punching a hole in the packaging material and welding an inner tape onto a reverse surface of the packaging material and covering the hole and welding a lip onto an outer surface of the packaging material via a pull tab, said lip at least partially surrounding the hole and at the same time welding together the inner tape and the pull tab through the hole to thereby form a rupture portion (as in claim 16), wherein the cap includes a lip and wherein step (a) includes fixing a lip onto a packaging material, forming a discharge opening portion within an area of the packaging material at least partially surrounded by the lip and bonding a pull tab to

the outer surface of the packaging material to cover the discharge opening portion (as in claim 17), further comprising bonding an inner tape 15 to the reverse surface of the packaging material to cover the discharge opening portion (as in claim 18), for the purpose of preserving flavor of the product as in the abstract.

Therefore it would have been obvious to one having ordinary skill in the art to provide Hitoshi et al. with an inner tape design to preserve flavor of the product.

9. Claims 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hitoshi et al. (Japanese Utility Application 146545/1989) in view of Weiteder et al. (5,875,958).

Hitoshi et al. teaches the invention substantially as claimed including a thin walled portion is preformed in the packaging material before forming but does not show the cap includes a collar and step (a) includes fixing the cap onto the packaging material with the collar surrounding the thin wall portion and welding a pull tab onto an outer surface of the packaging material in order to cover an area surrounded by the collar portion (as in claim 15).

However, Weiteder et al. teaches the cap includes a collar and step (a) includes fixing the cap onto the packaging material with the collar 3 surrounding the thin wall portion and welding

a pull tab 9 onto an outer surface of the packaging material in order to cover an area surrounded by the collar portion (as in claim 15) for the purpose of creating a safe seal for safe transportation and storage as in column1, lines 36-50.

Therefore, it would have been obvious to one having ordinary skill in the art to employ a specific pull tab and collar arrangement for the purpose of creating an effective seal.

Allowable Subject Matter

10. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claim 14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

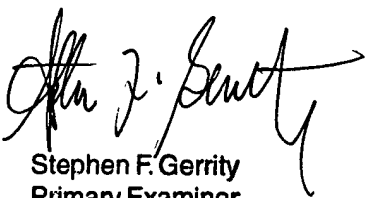
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis B Tran whose telephone number is 703-305-0611. The examiner can normally be reached on 8AM-6PM Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

lbt



Stephen F. Gerrity
Primary Examiner